

(Reprint No. 2)

SOUTH AUSTRALIA

**WORKERS REHABILITATION AND COMPENSATION (GENERAL)
REGULATIONS, 1987**

These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at 1 May 1995.

It should be noted that the regulations were not revised (for obsolete references, etc.) prior to the publication of this reprint.

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REGULATIONS UNDER THE WORKERS REHABILITATION AND COMPENSATION ACT, 1986

WORKERS REHABILITATION AND COMPENSATION (GENERAL) REGULATIONS, 1987

being

No. 232 of 1987: *Gaz.* 24 September 1987, p. 1002¹

as varied by

- No. 215 of 1988: *Gaz.* 6 October 1988, p. 1248²
- No. 38 of 1989: *Gaz.* 23 March 1989, p. 825³
- No. 38 of 1990: *Gaz.* 22 March 1990, p. 816⁴
- No. 65 of 1990: *Gaz.* 24 May 1990, p. 1435
- No. 171 of 1991: *Gaz.* 1 August 1991, p. 497⁵
- No. 231 of 1991: *Gaz.* 14 November 1991, p. 1291
- No. 97 of 1992: *Gaz.* 18 June 1992, p. 1810
- No. 212 of 1992: *Gaz.* 10 December 1992, p. 1761⁶
- No. 64 of 1993: *Gaz.* 22 April 1993, p. 1421⁷
- No. 148 of 1993: *Gaz.* 24 June 1993, p. 2121⁸
- No. 140 of 1994: *Gaz.* 18 August 1994, p. 493⁹
- No. 36 of 1995: *Gaz.* 27 April 1995, p. 1642¹⁰

- ¹ Came into operation at 4 p.m. 30 September 1987: reg. 2.
- ² Came into operation 17 October 1988: reg. 2.
- ³ Came into operation subject to the operation of section 112(2a) of the Workers Rehabilitation and Compensation Act, 1986: reg. 2.
- ⁴ Came into operation subject to the operation of section 112(2a) of the Workers Rehabilitation and Compensation Act, 1986: reg. 2.
- ⁵ Came into operation subject to the operation of section 112(2a) of the Workers Rehabilitation and Compensation Act, 1986: reg. 2.
- ⁶ Came into operation 10 December 1992: reg. 2.
- ⁷ Came into operation 3 May 1993: reg. 2.
- ⁸ Came into operation 1 July 1993: reg. 2.
- ⁹ Came into operation 18 August 1994: reg. 2.
- ¹⁰ Came into operation 27 April 1995: reg. 2.

N.B. The following regulations have been disallowed:

- No. 14 of 1994: *Gaz.* 17 March 1994, p. 746 see *Gaz.* 19 May 1994, p. 1226.
- No. 15 of 1994: *Gaz.* 17 March 1994, p. 748 see *Gaz.* 26 May 1994, p. 1272.
- No. 20 of 1994: *Gaz.* 31 March 1994, p. 922 see *Gaz.* 19 May 1994, p. 1226.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the regulations see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

Citation

1. These regulations may be cited as the *Workers Rehabilitation and Compensation (General) Regulations, 1987*.

Commencement

2. These regulations will come into operation at 4 p.m. on 30 September, 1987.

Interpretation

3. In these regulations—

"the Act" means the *Workers Rehabilitation and Compensation Act, 1986*.

"prime bank rate", for a particular financial year, means the rate (expressed as a percentage per annum) fixed by the State Bank of South Australia at the commencement of that financial year as its indicator lending rate.

Continuity of service of staff of corporation

4. For the purposes of section 23(d) of the Act, employers who are prescribed by or under the *Government Management and Employment Act, 1985*, for the purpose of preserving the continuity of service of persons who become public service employees are a prescribed class of employers.

Medical expenses

5. For the purposes of section 32(2)(e) of the Act, the maximum amount of compensation payable for the cost of the accommodation (including meals) of a worker away from home for the purpose of receiving medical services or approved rehabilitation is \$90 per day.

Transportation for initial treatment

5a. For the purposes of section 33(4) of the Act, the amount of \$150 is prescribed.

Compensation for property damage

6. For the purposes of section 34 of the Act, the following limits apply in relation to the compensation payable for damage to the personal property:

- (a) for damage to therapeutic appliances and tools of trade—no limit;
- (b) for damage to clothes and personal effects—a limit of \$1 000 in total.

Recovery of certain amounts paid to workers

6a. (1) These regulations apply in relation to the Corporation's ability to recover or set off an amount under sections 36(5), (6) or (7), 37(5) or 42b(10) of the Act.

(2) Subject to subregulation (3), the Corporation must—

- (a) commence proceedings to recover an amount due to the Corporation as a debt; or
- (b) exercise a right of set off under section 36(5)(b) or 42b(10)(b) of the Act,

within two years after the date on which the Corporation becomes entitled to take action under the Act.

(3) Where the Corporation is satisfied on reasonable grounds—

- (a) in the case of an amount paid under section 36(4) or (4a) or section 37(4) of the Act—that the worker commenced the proceedings before a Review Officer knowing that he or she had no reasonable cause to dispute the Corporation's decision to discontinue, suspend or reduce weekly payments to the worker; or
- (b) in any other case—that the worker provided false or misleading information to the Corporation,

the Corporation may commence the proceedings or exercise the right of set off referred to in subregulation (2) at any time within 10 years after the date on which the Corporation becomes entitled to take action under the Act.

(4) The Corporation may, according to what is reasonable in the circumstances of the particular case, recover an amount under section 36(5)(a), (6) or (7), section 37(5) or section 42b(10)(a) of the Act—

- (a) as a single lump sum; or
- (b) by periodic payments; or
- (c) by a combination of a lump sum and periodic payments; or
- (d) in some other manner agreed between the Corporation and the worker.

(5) Subregulation (4) is subject to the following qualifications:

- (a) the Corporation cannot require that a worker make periodic payments in excess of 10 per cent of the worker's net income for the period over which those payments are to be made without the agreement of the worker; and
- (b) the Corporation may, in its absolute discretion, waive (absolutely or subject to such conditions as the Corporation thinks fit) the whole or any part of an amount that it is entitled to recover if—
 - (i) the Corporation is satisfied that the worker is experiencing severe financial hardship, or it appears appropriate to do so on account of any other special circumstances peculiar to the worker; or
 - (ii) the Corporation considers that it is appropriate to do so after the Corporation has balanced the likely costs that would be associated with recovering the amount against the amount itself; and
- (c) unless the Corporation is satisfied on reasonable grounds—
 - (i) in the case of an amount paid under section 36(4) or (4a) or section 37(4) of the Act—that the worker commenced the proceedings before a Review Officer knowing that he or she had no reasonable cause to dispute the Corporation's decision to discontinue, suspend or reduce weekly payments to the worker; or
 - (ii) in any other case—that the worker has provided false or misleading information to the Corporation,

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the Corporation must grant the following remissions if the total amount payable is repaid within the following periods:

- (iii) a 15 per cent remission if the total amount is repaid within one month of the date on which the worker first receives a written notification of the amount that the worker is liable to pay;
- (iv) a 10 per cent remission if the total amount is repaid within six months of the date on which the worker first receives a written notification of the amount that the worker is liable to pay.

(6) If a worker has made a periodic payment to the Corporation under subregulation (4), the Corporation must, within a reasonable time after the end of the financial year in which the payment is made, furnish the worker with a statement that sets out—

- (a) the total amount paid by the worker during that financial year; and
- (b) the amount left to be paid (if any),

and must furnish a final statement when the debt is extinguished.

(7) In this regulation—

"net income" of a worker means income after an appropriate deduction is made for any income tax payable by the worker.

Economic adjustments to weekly payments

7. For the purposes of section 39(2)(a)(ii) of the Act, a worker must make an application under that section by using a form approved by the Corporation.

Absence from Australia

8. (1) For the purposes of section 41(1) of the Act, a worker intending to be absent from Australia must give the Corporation the following information:

- (a) the date on which the worker intends to leave Australia;
 - (b) the date on which the worker intends to return to Australia or, if there is no such date, an estimate of the duration of his or her absence from Australia;
 - (c) details of the places where the worker will be while absent from Australia;
 - (d) an address at which contact may be made with the worker;
 - (e) details of any treatment that the worker intends to receive, or details of any arrangements for treatment that the worker has made, while absent from Australia;
 - (f) details of any employment that the worker might undertake while absent from Australia;
- and
- (g) details of any consultation in relation to the proposed absence that the worker has undertaken with any employer (including information as to the outcome of that consultation).

(2) The information required under subregulation (1) must be supplied in a form approved by the Corporation.

Compensation for loss of earning capacity

8aa. (1) For the purposes of section 42a(2)(c) of the Act, the prescribed discount rate is 3 per cent.

(2) For the purposes of section 42a(5) of the Act, the principles, and discount and inflation rates, that are to be applied to determine the actuarial equivalence of equal instalments to a lump sum are reflected in the following formula:

$$X = \frac{(K \times P)}{\left(1 - \frac{1}{(1 + K)^N}\right) \times (1 + K)}$$

Where—

X is the amount of each instalment

K equals $((1 + I)^{1/M} - 1)$ where—

M is the number of instalments to be paid per year or, if the instalments are to be paid less frequently than annually, M is an amount calculated as follows:

$$M = \frac{1}{\begin{array}{l} \text{Number of years} \\ \text{duration of each} \\ \text{particular} \\ \text{instalment} \end{array}}$$

I is the prescribed discount rate (expressed as a decimal number) plus the prescribed inflation rate (expressed as a decimal number) for the period to which the assessment relates (*see subregulation (3)*)

P is the lump sum assessment of capital loss

N is the total number of instalments to be paid over the period to which the assessment relates.

(3) For the purposes of subregulation (2)—

(a) the prescribed discount rate is 3 per cent;

and

(b) the prescribed inflation rate is the annual change (expressed as a percentage) in the weekly award rates of pay index for full-time adult employees, referenced to persons and South Australia, as published by the Commonwealth Statistician for September in the year immediately preceding the year in which the assessment is made.

(4) For the purposes of section 42b(3) of the Act, the prescribed period is one month.

(5) An application for review under section 42b(3) of the Act must be in the form set out in the first schedule of the *Workers Rehabilitation and Compensation (Reviews and Appeals) Regulations 1987*.

Compensation for non-economic loss

8a. Pursuant to section 43(9) of the Act, the third schedule of the Act is amended by adding the following disability and percentage:

Nature of the Disability	Percentage fixed in relation to the disability
Loss of hand or loss of thumb and four fingers	80.

Compensation payable on death

9. (1) For the purposes of section 44(1)(a) of the Act, the prescribed amount that may be payable in relation to a funeral benefit is—

- (a) in relation to a worker who dies in 1987—\$2 500;
- (b) in relation to a worker who dies in a subsequent year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 500 the same proportion as the Consumer Price Index for the September quarter of the immediately preceding year bears to the Consumer Price Index for the September quarter, 1986.

(2) For the purposes of section 44(14) of the Act, the prescribed rate of discount that is to be applied to the capitalized value of weekly payments under section 44 is 3%.

Exemption from first week payments

9a. (1) Pursuant to section 46(8a) of the Act, employers who are participating in the RISE scheme are, subject to subregulation (2), a prescribed class of employers exempt from the operation of section 46(3) of the Act.

(2) The exemption under subregulation (1) is limited to cases where—

- (a) the disability is suffered by a worker who is employed by the employer under the RISE scheme;

and

- (b) the disability is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of the disability to which the worker's participation in the RISE scheme can be attributed.

(3) In this regulation—

"the RISE scheme" means the re-employment scheme called the *Re-employment Incentive Scheme for Employers* established by the Corporation for workers who have suffered compensable disabilities.

Rate of interest payable on weekly payments in arrears

10. For the purposes of section 47(1) of the Act, the interest payable on a weekly payment in arrears is the prime bank rate for the financial year in which the amount went into arrears.

Payments by Corporation on behalf of defaulting employers

11. For the purposes of section 48(2) of the Act, the administration fee payable to the Corporation when the Corporation makes a payment on behalf of an employer is \$50.

Notification by exempt employers

11a. Pursuant to section 63(3aa) of the Act—

- (a) an exempt employer must provide the following information to the Corporation before it proceeds to make an assessment under Division IVA of Part IV of the Act:
 - (i) the period to which the assessment relates;
 - (ii) the worker's weekly earnings and an estimation of the income tax that would otherwise be payable over the period to which the assessment relates;
 - (iii) whether the proposed assessment is to be a final assessment or an interim assessment;
 - (iv) the amount of capital loss assessed by the exempt employer;and
 - (v) whether it is proposed that the amount assessed be paid in a single lump sum or by instalments and, in the case of instalments, the frequency and amount of each instalment;
 - (b) where the exempt employer has made an interim assessment of loss—an exempt employer must, at least one month before the expiration of the period to which that interim assessment relates, furnish the Corporation with new information that complies with the requirements of paragraph (a) for the period to which the next assessment will relate;
- and
- (c) an exempt employer must, on request, within a reasonable time, supply the Corporation with such other information as the Corporation may require in order to determine whether it is appropriate to grant its consent to the assessment under the Act.

Progress reports to employers

12. For the purposes of section 107(2) of the Act, the fee payable on a request under section 107 by an employer to the Corporation for a report on a worker is \$5.

Medical examination requested by employers

13. For the purposes of section 108(2), a worker is not required to submit to examinations under section 108 more frequently than once in every two months.

Disabilities that develop gradually

14. (1) For the purposes of section 113(3) and (4), noise induced hearing loss is a prescribed disability.

(2) The following procedures apply for the purpose of establishing whether a worker is suffering from noise induced hearing loss:

- (a) the worker must first undergo an audiometric test of hearing conducted by—
 - (i) a legally qualified medical practitioner;
 - (ii) an audiologist;or
 - (iii) a person who has been adequately trained in audiometry by the National Acoustic Laboratories, the South Australian Health Commission, a legally qualified medical practitioner or an audiologist;
- (b) if the audiometric test indicates that the worker has a hearing loss, the worker must undergo a further audiometric test of hearing conducted by—
 - (i) a legally qualified medical practitioner registered in the speciality of otorhinolaryngology, or approved by the Corporation;
 - (ii) an audiologist;or
 - (iii) an audiometrist acting under the supervision of a legally qualified practitioner who qualifies under subparagraph (i), or an audiologist;
- (c) in relation to a test under paragraph (b)—
 - (i) the test must, in the case of air conduction testing, comply with the requirements of Rule 5.6.3.4 (a) and (c) of Australian Standard 1269 "SAA Hearing Conservation Code";
 - (ii) during the test, the hearing levels of the worker must be determined at audiometric test frequencies, 500, 1 000, 1 500, 2 000, 3 000 and 4 000Hz with an audiometer calibrated to the reference specified in Australian Standard AS—Z43 Part 2 "Reference Zero for the Calibration of Pure Tone Audiometers";
 - (iii) the hearing levels of the better and worse ear must be determined at each audiometric test frequency and, using the hearing levels obtained, a percentage loss of hearing must be read at each audiometric test frequency in accordance with the appropriate tables so as to obtain six values of percentage loss of hearing, and those six values of percentage loss of hearing are to be added together to obtain the binaural percentage loss of hearing;
 - (iv) where the worker is a man of or over the age of 56 years or a woman of or over the age of 69 years, the value in table P set out in Appendix 5 of NAL Report No 118 appropriate to the worker's age and sex must be subtracted from the binaural percentage of loss of hearing obtained in accordance with the procedure set out in subparagraph (iii);

- (d) in addition to an audiometric test under paragraph (c), a legally qualified medical practitioner registered in the speciality of otorhinolaryngology, or approved by the Corporation, must carry out a physical examination of the worker (and any other appropriate investigation that the medical practitioner considers necessary) to determine whether the worker's hearing loss is noise induced or is due, or partly due, to ear disease or other causes of hearing loss and must, having regard to the results of the audiometric test of hearing, determine the noise induced hearing loss of the worker as a binaural noise induced hearing loss expressed as a percentage loss of hearing.

(3) For the purposes of this regulation—

- (a) "audiologist" means a person who is either a member or qualified to be a member of the Audiological Society of Australia

"audiometrist" means a person who has been trained in audiometry by a legally qualified medical practitioner registered in the speciality of otorhinolaryngology or approved by the Corporation or by an audiologist:

"Australian Standard" means a standard of the Standards Association of Australia as in force for the time being and from time to time:

"Hz" means Hertz where one Hertz equals one cycle per second:

"NAL Report No 118" means the report entitled *Improved Procedure for Determining Percentage Loss of Hearing* published by the National Acoustic Laboratories in January 1988 (ISBN 0 644 06884 1):

"National Acoustic Laboratories" means the National Acoustic Laboratories of the Australian Hearing Services of the Commonwealth:

and

- (b) the appropriate tables are tables RB-500 to RB-4000 (inclusive) set out in Appendix 3 of NAL Report No 118.

Disclosure of information

15. (1) Pursuant to section 112(2)(e) of the Act, the following information may (to such extent as may be determined by the Corporation in its absolute discretion) be disclosed to the South Australian Department of Mines and Energy:

- (a) in relation to any employer registered under the Act who is engaged in the mining or petroleum industries—
- (i) the name, residential or postal address, business address, and telephone number, of the employer;
 - (ii) any registration code or other identifying number assigned to the employer by the Corporation;
 - (iii) the class or classes of industry in which the employer is or has been engaged;
 - (iv) the number of workers employed or formerly employed by the employer in each class of industry;

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- (v) the total number of disabilities suffered by workers employed by the employer during any particular period;
- (b) in relation to any worker who has suffered a compensable disability while employed in the mining or petroleum industries—
 - (i) the name of the employer from whose employment the disability arose;
 - (ii) the day on which the disability occurred;
 - (iii) the place at which the disability occurred;
 - (iv) the nature of the disability;
 - (v) the apparent cause of the disability;
 - (vi) details of any work being undertaken by the worker at the time of the occurrence of the disability;
 - (vii) any information relating to an aggravation, acceleration, exacerbation, deterioration or recurrence of the disability;
 - (viii) the period of any incapacity (or the estimated period of incapacity) on account of the disability;
 - (ix) details of any rehabilitation provided to the worker.

(2) Pursuant to section 112(2)(e) of the Act, the following information may (to such extent as may be determined by the Corporation in its absolute discretion) be disclosed to the South Australian Department of Industry, Trade and Technology in relation to any employer registered under the Act—

- (a) the name, residential or postal address, business address, and telephone number, of the employer;
- (b) any registration code or other identifying number assigned to the employer by the Corporation;
- (c) the class or classes of industry in which the employer is or has been engaged;
- (d) the number of workers employed or formerly employed by the employer in each class of industry.

Third schedule—Percentage loss of bodily function

16. Pursuant to clause 4 of the third schedule of the Act, the *Guides to the Evaluation of Permanent Impairment* Third Edition (Revised) published by the American Medical Association (Department of Preventive Medicine and Public Health, American Medical Association, Chicago) are approved as professionally accepted principles for the purpose of determining the percentage loss of total bodily function represented by a particular impairment of a physical or sensory faculty.

Third schedule—Aggregation of two or more disabilities

16A. Pursuant to clause 5 of the third schedule of the Act, the following is prescribed as the principle to be applied if a worker is entitled to compensation in respect of two or more disabilities to which that schedule applies:

$$P = P1 + P2 + P3 + P4 + \dots \text{and so on}$$

Where—

P is the worker's percentage entitlement of the prescribed sum;

P1, P2, P3, P4..... are the percentages of the prescribed sum that are payable under this principle for the various disabilities, calculated as follows:

$$P1 = a$$

$$P2 = \frac{100 - P1}{100} \times b$$

$$P3 = \frac{100 - (P1 + P2)}{100} \times c$$

$$P4 = \frac{100 - (P1 + P2 + P3)}{100} \times d,$$

and so on, where a, b, c, d and so on are the percentages that would be individually applicable to the disabilities if there were no question of aggregation.

Note: Where applicable, the supplementary benefit payable under section 43(7a) of the Act is payable in addition to the amount calculated above if that amount exceeds 55 per cent of the prescribed sum.

Notices

17. Pursuant to sections 36(3), 37(3), 39(3) and 45(7) of the Act, the following information must be included in a notice under any of those sections:

- (a) a statement of the decision that has been made to discontinue, reduce, suspend or adjust weekly payments; and
- (b) a reference to the provision of the Act and, if relevant, the regulations made under the Act, on which the Corporation is relying to discontinue, reduce, suspend or adjust weekly payments, and the text of that provision; and
- (c) the general basis on which the Corporation has made its decision.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 3:	definition of "impairment" inserted by 97, 1992, reg. 2; revoked by 212, 1992, reg. 3
Regulation 5a:	definition of "prime bank rate" inserted by 215, 1988, reg. 3
Regulation 6a:	inserted by 215, 1988, reg. 4
Regulation 6a(1):	inserted by 64, 1993, reg. 3
Regulation 6a(2):	varied by 148, 1993, reg. 3(a)
Regulation 6a(4):	varied by 148, 1993, reg. 3(b)
Regulation 8a:	varied by 148, 1993, reg. 3(c)
Regulation 8a:	inserted by 148, 1993, reg. 4
Regulation 8a:	inserted by 97, 1992, reg. 3; substituted by 212, 1992, reg. 4
Regulation 9a:	inserted by 231, 1991, reg. 2
Regulation 10:	varied by 215, 1988, reg. 5
Regulation 11a:	inserted by 148, 1993, reg. 5
Regulation 14(2):	varied by 140, 1994, reg. 3(a)-(f)
Regulation 14(3):	varied by 140, 1994, reg. 3(j)
	definition of "audiometrist" varied by 140, 1994, reg. 3(g)
	definition of "hearing impairment" revoked by 140, 1994, reg. 3(h)
	definition of "NAL Report No 118" inserted by 140, 1994, reg. 3(i)
	definition of "National Acoustic Laboratories" inserted by 140, 1994, reg. 3(i)
Regulation 15:	inserted by 38, 1989, reg. 3; varied by 38, 1990, reg. 3; revoked by 65, 1990, reg. 2; inserted by 171, 1991, reg. 3
Regulation 16:	inserted by 212, 1992, reg. 5
Regulation 16A:	inserted by 36, 1995, reg. 3
Regulation 17:	inserted by 64, 1993, reg. 4; substituted by 140, 1994, reg. 4